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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/661,179  | 09/12/2003  | Therese Cetrulo      | 0876-0203           | 8282             |
| 61146   | 7590        | 01/16/2007           | EXAMINER            |                  |
| PEPSICO, INC.<br>c/o GOODWIN PROCTER LLP<br>599 LEXINGTON AVE<br>NEW YORK, NY 10022 |             |                      | PADEN, CAROLYN A    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1761                |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE  |             | MAIL DATE            | DELIVERY MODE       |                  |
| 3 MONTHS  |             | 01/16/2007           | PAPER               |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/661,179             | CETRULO ET AL.      |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Carolyn A. Paden       | 1761                |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 07 November 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-19 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application \_\_\_\_\_  
6)  Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 7, 8, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers (4,889,739) for reasons of record.

Applicant argues that examiner's position is improper because orange juice is "typically not diluted." This argument has been considered but is not persuasive. There is no technical reason why the juice of Powers cannot be diluted. The fact that it is not conventionally done in Powers is not seen to constitute unobviousness. Orange juice has a standard of identity, which sets forth a particular Brix level for single strength orange juice. But one of ordinary skill in the art may dilute the orange juice to any extent as long as he modifies the packaging label for the orange juice to state that it is an orange drink. Dilution of orange juice is a well-known expedient. Even the ordinary consumer is familiar with diluting purchased frozen concentrated orange juice to obtain single strength orange juice. Water is a well-known diluent for orange juice. Applicant argues viscosity, which is not a part of the claims. Applicant argues floating pulp, which he

defines as being from sinking pulp. Since Powers discloses a level of sinking pulp, no unobvious result is seen from the recitation of floating pulp. Applicant urges caloric reduction but one of ordinary skill in the food art would recognize that water has less calories than sugar and that the Brix level of a liquid is a measure of its sugar content.

Claims 1-4, 7, 8 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojima in view of Powers for reasons of record.

Applicant argues that Ojima does not show an orange juice drink at example 30. Example 50 shows an orange juice drink with sucrose. Although the text of the last office action listed an incorrect example number, applicant could surely scan a document for an appropriate example that fits the description in the office action. Applicant urges that Powers does not disclose the required Brix level and diluent but this argument was discussed above.

Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuppers in view of Powers for reasons of record.

Applicant argues that one would not expect to dilute the beverage of Powers because of the alterations in the physical characteristics of the beverage. Dilution of orange juice is a well-known expedient. Even the

ordinary consumer is familiar with diluting purchased orange juice. Water is a well-known diluent for orange juice. Applicant urges that Kuppers is not properly combined with Powers or Ojima. This is disagreed with for the reasons discussed above.

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

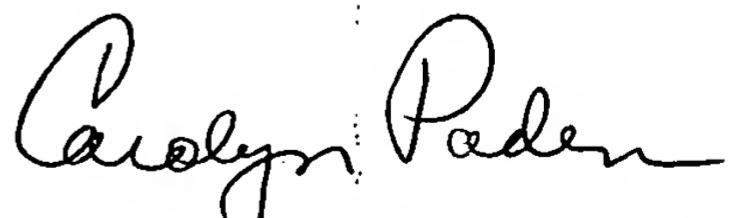
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 1-10-07  
PRIMARY EXAMINER 1761